110-53

1953

Apr. 15

Mr. Russell Hilliard, Director
Aeronautics Commission
Concord Airport
Concord, New Hampshire.

Re: Aeronautical Appropriation,
Chapter 162, Laws of 1951

Dear Mr. Hilliard:

With reference to your inquiry dated April 10, relative to whether or not amounts not in excess of $5000 may be expended for construction of additional facilities at airports where previously funds in excess of that amount have been contributed by the State under the Federal Aid Airport Program for original construction, it appears upon interpretation of the statute that the problem is largely one of judgment of the Commission.

Chapter 162, section 2, Laws of 1951 provides that the $150,000 fund is appropriated "to be used as needed for the purpose of supplementing town funds in such proportions as the aeronautics commission may determine for the construction of airports, excluding the cost of land and buildings, under the Federal Aid Airport Program or for equal matching of town funds for the construction of airports, excluding the cost of land and buildings, by state contributions not in excess of five thousand dollars." It does not appear to me that maintenance of existing airports, or repairs, is authorized.

Whether an extension of a runway or other additional new construction should be undertaken which involves this part of the fund depends, in my opinion, upon whether the expenditure will complete that particular item of construction. For instance, if it were decided that 300 feet is to be added to a runway, I do not think you are authorized under the statute to expend $5000 this year, $5000 next year and $5000 the year after that, to add 100 feet each year. I think, under such circumstances, the Commission would be justly criticized as it would be obvious that the contemplated construction would not be by contribution "not in excess of $5000" but would really be a contemplated expenditure of $15,000. On the other hand, if an airport which had been in existence several years, is unsuitable or deficient for lack of some facility which requires new construction and the total cost of such construction, viewed as a completed project, does not exceed the maximum set, the expenditure would appear authorized without legislative action. Otherwise a special appropriation such as was provided for the Whitefield Airport in 1951 in the section quoted would be required.

Your letter mentions airport improvement or construction. The only improvement I find authorized is as above stated, one involving new construction. Improvements which are repairs or replacements of existing facilities would seem to have to come out of the Aeronautical Fund, which by Laws of 1947, chapter 281, section 9, permits one-half to be used for the establishment and maintenance of air navigation facilities on the state airways system. Taking the statutory definition in Revised Laws, chapter 306, section 3, paragraph VI, the term "air navigation facility . . . including landing areas, . . ." appears to limit the Commission's activities in regard to improvements not involving new construction.

As I read chapter 162 of the Laws of 1951, it appears to me that the Federal Aid Airport Program and equal matching of town funds are expressed in the alternative. They would be regarded as separate contingencies which would authorize the Commission to match town funds for construction even though there had been a previous contribution under the Federal Aid Airport Program, providing this new construction is for a new and separate facility not originally contemplated under the Federal Aid Airport Program.

Likewise as to the question contained in the last paragraph of your communication, which I have pointed out above involves the preliminary determination by the Commission as to whether the proposed $5000 expenditure is for the whole project or merely a fragment of it. I find no authority for the Commission to exceed the $5000 amount for one project by spending it piecemeal.

Very truly yours,

George F. Nelson
Assistant Attorney General

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. . ." Laws 1947, c. 240, s. 1. In the same legislation, again for the first time, provision was made for an exemption to residents who had served in the armed forces of governments associated in a war with the United States.

At the time the phrase "armed forces of the United States" was first used in our law, there was, to the limits of our research, no reason to believe that reserve components such as the National Guard not in federal service were considered a part of the armed forces of the United States. The introduction of the phrase in 1947, it is believed, may well have resulted from the necessity of differentiating between those who had served in the United States forces from those who had served with allied governments.

Since 1947, two federal statutes have been passed in which the phrase — for federal purposes and more particularly for the purposes of the statutes in which found — has been defined to include the reserve components, being the Mutual Defense Assistance Act of 1949 (22 U S C A 1933 (f)) and the Armed Forces Reserve Act of 1952 (50 U S C A s. 901 (c)). But the definitions included in these Acts, as noted, apply only in respect to the particular Acts; they do not modify even other federal legislation, much less do they purport to attempt to modify State legislation.

Our statute is to be taken then, in the light of surrounding facts when passed and in the light of the previous practice under the exemption law. When our law was enacted, as noted, there appears to have been no broad federal definition of the phrase which would include reserve components — even, indeed, as now; administratively, the Tax Commission has always deemed eligibility to depend upon active service under federal control. There is no evidence to suggest that the Legislature in 1947 intended to broaden eligibility to include service in state control.

Very truly yours,

Warren E. Waters
Assistant Attorney General

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